

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0114P

Income Tax

Fiscal Year December 29, 1994

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on an income tax assessment resulting from an audit conducted for the fiscal year ended December 29, 1994.

The taxpayer is a manufacturer of food flavoring with operations in the U.S. and foreign countries. The taxpayer has a manufacturing plant in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues they were compliant with Indiana tax regulations. The audit assessment dealt with a Federal RAR adjustment and the misapplication of throwback rules.

The taxpayer says they were compliant with regard to the Federal RAR adjustment in that the taxpayer and the auditor agreed prior to the completion of the Federal audit that any Federal adjustment would be included in the Indiana audit report.

With regard to the throwback rules, the taxpayer says the misinterpretation happened as the taxpayer had a shortage of employees as a result of a merger.

The Department agrees with the taxpayer that the taxpayer was in compliance with regard to the Federal RAR adjustment. However, the majority of the assessment was a result of the misapplication of throwback rules. The Department feels the taxpayer was inattentive in that the taxpayer did not have enough employees to perform tax duties.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.